IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

(1)Civil Misc. Writ Petition No.934(M/S) of 2003

Sachin Luthra .... Petitioner

Versus

(1) Hemwati Nandan Bahuguna,
Garhwal University, Srinagar Garhwal
Uttaranchal through its Vice Chancellor,

(2) Graphic Era Institute of Technology,
Dehradun through its Chairman. .... Respondents

(2)Civil Misc. Writ Petition No.834(M/S) of 2003

Amit Tomar .... Petitioner

Versus

(1) Hemwati Nandan Bahuguna,
Garhwal University, Srinagar Garhwal
Uttaranchal through its Vice Chancellor,

(2) Graphic Era Institute of Technology,
Dehradun through its Chairman. .... Respondents

AND

(3)Civil Misc. Writ Petition No.504(M/S) of 2003

Jaskirat Singh .... Petitioner

Versus

(1) Hemwati Nandan Bahuguna,
Garhwal University, Srinagar Garhwal
Uttaranchal through its Vice Chancellor,

(2) Graphic Era Institute of Technology,
Dehradun through its Chairman. .... Respondents

.....

Hon'ble P.C.Verma, J.

All the aforementioned three writ petitions involve common question of law, hence they are taken up together and disposed of by a common order.

Heard Sri M.S.Pal and Sri S.K.Posti, learned counsel for the petitioners as well as Sri L.P.Naithani, learned counsel for the H.N.B.Garhwal University and Sri Alok Singh, learned

counsel for the respondent No.2-Graphic Era Institute of Technology.

Writ petition No.934 (M/S) of 2003 has been filed by the petitioner seeking writ, order or direction in the nature of mandamus commanding the respondents to grant admission to the petitioner and to attend the classes as he has already deposited the fees for the 5th Semester.

Writ Petition No.834 (M/S) of 2003 has been filed by the petitioner seeking writ, order or direction in the nature of mandamus restraining the respondent No.2 not to enterfere in the study and examination of the petitioner of Classes of 3rd Semester of B.Tech.Degree Course for the batch 2002-2003.

Writ Petition No.504 (M/S) of 2003 has been filed by the petitioner seeking writ, order or direction in the nature of mandamus commanding the respondents to permit the petitioner in the 4th Semester examinations conducted by H.N.B. Garhwal University, which was scheduled to be held on 16th of June 2003 and not to interfere in the further study of the petitioner till the declaration of result of 4th Semester.

The petitioner of Writ Petition No.934 (M/S) of 2003 was admitted in Degree Course of Bachelor of Technology for the academic session 2001-2005. As per the Ordinance of the University applicable to the affiliated Colleges also, the entire course of 4 years comprised of two semesters in each year i.e. total 8 semesters. The petitioner succeeded in 1st semester then he was admitted in 2nd semester. In the 2nd semester he could not pass in one paper. Therefore, he had to pass in that subject in 4th semester, which is called back paper. Thereafter the petitioner was admitted to the 3rd semester. The petitioner

had to clear four subjects i.e. one subject of the 2nd semester in 4th semester and three subjects of 3rd semester in 5th semester as per statement made in the writ petition.

A counter affidavit has been filed in which it has been stated that relying on Clause 3.2 of the Ordinance that since the petitioner did not pass in four subjects, he was not entitled to the benefit of the provisions of Clause 4 of the Ordinance which provides for the back paper in future semesters. This fact has not been denied that the petitioner did not pass in four subjects in 3rd Semester. Therefore, in view of the provisions contained in Clause 3.2 of the Ordinance, the petitioner has to re-appear in the 3rd semester to pass in all the subjects of the 3rd semester as he will he declared as failed candidate in the 3rd semester. During the intervening period when the result was awaited the petitioner was permitted to appear in the class in 4th semester and also in 5th semester provisionally. Since the petitioner's result of the 3rd semester was not declared and was awaited, the admission in 4th & 5th semesters was provisional. He has to clear one semester then only he has to get benefit of appearing in 5th semester for the back paper. A provision has been made in the Ordinance giving latitude to the students, who could not pass in more than three subjects in any semester. He can appear and clear that semester by appearing as ex student or as a regular student.

In any case without clearing the semester in which the student has failed in more than three subjects he cannot be permitted to appear in future semesters. Therefore, in the facts and circumstances of the case, the relief prayed for by the petitioner cannot be granted to the petitioner.

The petitioner of Writ Petition No.**834 (M/S) of 2003** has failed in four subjects of 1st semester. If a student fails in more than three papers he cannot be permitted to take back papers and in that event he is supposed to clear that semester afresh either as ex student or as a regular student as admitted by the petitioner in Para-8 of the petition.

The petitioner of Writ Petition No.**504 (M/S) of 2003** has failed in three subjects of 1st semester and in four subjects in 2nd semester. Since the petitioner has failed in 2nd semester in four subjects now as per regulations he has to clear all the ten papers of 2nd semester either as ex student or as a regular student.

The learned counsel for the petitioners, in both the above writ petitions, could not convenience me on any other point on the basis of which the writ prayed for could be granted to them.

In view of above, I am not inclined to entertain these writ petitions. These petitions are devoid of merits and are hereby dismissed. The interim orders dated 15.09.2003 in both the above writ petitions are discharged. However, since the petitioner of Writ Petition No.934 (M/S) of 2003 has deposited the fee of 5th semester and was not allowed to appear in 5th semester and the fee charged from the petitioner in Writ Petition No.834 (M/S) of 2003 for the 5th & 6th semesters shall be deposited in any nationalised bank and whenever the petitioners clear their respective semesters they will be admitted and they will not be charged fresh fee.

In view of the statement made by Sri S.K.Posti, learned counsel for the petitioner in Writ Petition No.834

(M/S) of 2003 on the basis of letter dated 20th September, 2003 written by Students Parents Association to the Chancellor highlighting the fact that favouritism have been adopted by the Professors of the Institute in awarding the marks as the son of the Director of the Institute, who could not pass in the State of Uttar Pradesh, has topped the Institute. He was admitted only a month before the examination. His attendance could not complete by that time but despite this he was allowed to appear in the examination. This letter dated 20th September, 2003 of the Students Parents Association addressed to the Chancellor passed by Sri Posti, learned counsel for the petitioner be kept on record. Considering the seriousness of the allegations, I direct the Superintendent of Police, Central Bureau of Investigation, Dehradun to investigate the matter and submit the report to this Court within a period of one month.

Copy of this order shall be sent by fax to the S.P., C.B.I., Dehradun by tomorrow.

(P.C.Verma, J.)

08.10.2003
P.Singh